

GF

**GARBARINI FITZGERALD P.C.**

420 Lexington Avenue  
Suite 2743  
New York, New York 10170  
Phone: 212.300.5358  
Fax: 888.265.7054  
www.garbarinilaw.com

January 10, 2014

**VIA ECF**

Hon. Analisa Torres  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: *Castro, et ano, individually and on behalf of all similarly situated employees v. Shrager, et al.*, 13-cv-7365 (AT)(RLE)  
Joint Letter

Your Honor:

All parties of record submit this Joint Letter and attached Proposed Joint Case Management Plan and Scheduling Order pursuant to Your Honor's Order dated December 13, 2013 (Dkt. No. 8) and Individual Rule of Practice II.B in anticipation of the parties' initial pretrial conference scheduled for January 14, 2014.

**1. Brief description of the case, including the factual and legal bases for the claims and defenses**

***Plaintiffs' Description of Claims***

Plaintiff Leandro Castro and Ashley Chavous, individually and on behalf of all other similarly situated employees, bring this action against Defendants Richard Shrager, Papa Express Inc., Rich Foods 37, LLC, and Papa Fresh, Inc., for all service charges, unpaid minimum and over-time wages pursuant to the Fair Labor Standard Act and New York Labor Law Article 6, § 190 *et seq.* and Article 19, § 650 *et seq.*, and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Part 142 ("NYLL") and for spread-of-hours and "off-clock" compensation and reimbursement for tools-of-the-trade expenses and illegally retained gratuities pursuant to the NYLL.

Defendants own and operate numerous quick service restaurants that are run as a single unified entity in the City and County of New York. Plaintiff Castro was employed by Defendants as

a delivery worker. During his employment, and that of all delivery workers at Defendants' restaurants, Plaintiff Castro was paid less than minimum wage, and was not paid overtime for all hours worked in excess of forty per week. Defendants also concocted a scheme, under the direction of Defendant Shragger, whereby all delivery workers, including Plaintiff Castro, worked the majority of their shift on non-tipped duties like answering the phones, making pizza and cleaning. The delivery workers were also required to purchase their own bicycles, helmets and reflectors and uniforms. As Part of the scheme to exploit the delivery workers, the Defendants illegally retained a \$1.50 gratuity for each and every delivery. The Defendants called this charge a "service fee" but did not inform their customers of this fact.

Plaintiff Chavous was employed initially as a cashier and was not paid overtime for any hours worked in excess of 40 hours per week. Both Plaintiffs, and all similarly situated employees, were not paid spread-of-hours pay and were forced to work off-the-clock.

All of the facts applicable to the Plaintiffs apply to all similarly situated employees of Defendants.

#### ***Defendants' Description of Claims***

Defendants deny each and every allegation set forth in the Complaint with regard to any wage payment impropriety. Defendants also deny that the named corporate Defendants are a single entity or otherwise meet the "enterprise" or "joint employer" theories under state and federal wage/hour law. Defendants assert that the Plaintiffs were paid properly for all worked, including all overtime and that they are not owed any wages or tips as alleged.

#### **2. Any contemplated motions**

Plaintiff proposes to move as soon as the Court will allow:

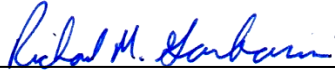
- 1 - for conditional certification of this matter under the FLSA;
- 2 - FLSA notice of this lawsuit be sent to all covered employees; and,
- 3 – summary judgment at the end of discovery.

Defendants propose to move for summary judgment at the appropriate time.

### 3. Prospect for settlement

The parties discussed settlement at the meet-and-confer held on January 10, 2014, and will continue to discuss an early resolution to this matter.

**GARBARINI FITZGERALD P.C.**

By:   
Richard M. Garbarini  
*Attorneys for Plaintiffs*

Encl. Proposed Civil Case Management and Scheduling Order

cc: Yale Pollack to (VIA ECF and to [ypollack@kdvlaw.com](mailto:ypollack@kdvlaw.com))  
*Attorneys for all Defendants*